

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

07/22/2002

CLERK OF THE COURT  
FORM D000C

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

FN 2002-090245

FILED: \_\_\_\_\_

DEBRA ASHLEY

DEBRA ASHLEY  
4826 E PRINCESS DR  
MESA AZ 85205

AND

STEPHEN CRITTENDEN

BRUCE E BLUMBERG

DISPOSITION CLERK-CSC  
MESA JUSTICE CT-EAST  
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal from an order continuing a Domestic Violence Order of Protection in full force and effect, pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since receipt of Appellant's Reply Memorandum on June 7, 2002. This Court has reviewed the record of the proceedings from the East Mesa Justice Court, and the Memoranda submitted.

Appellant, Steven Crittenden, appeals from the order of the East Mesa Justice Court of January 7, 2002, wherein the trial court continued a Domestic Violence Order of Protection issued against Appellant in full force and effect, after a hearing on the issue. Appellant contends that the trial court erred in

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

07/22/2002

CLERK OF THE COURT  
FORM D000C

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

FN 2002-090245

limiting his cross-examination of Debra Ashley. Specifically, Appellant contends that the trial court erred in precluding questions by Appellant's counsel asked of Appellee (Debra Ashley) concerning her financial interest in the Domestic Violence Order of Protection and her general bias and prejudice against Appellant.

Rule 401 of the Arizona Rules of Evidence defines "relevant evidence" as:

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Appellant contends that Appellee, Debra Ashley's financial motive, as well as her bias and prejudice against the Appellant, is relevant to showing her motive for fabrication of her testimony against the Appellant. The law in Arizona is well settled that the trier of fact when determining the credibility of a witness, has a right to know any fact tending to show that the witness has a bias, prejudice, or hostility against one of the parties.<sup>1</sup> It seems clear, particularly in a Domestic Violence type of case, that issues of bias and prejudice between parties which may effect their credibility and motive to distort the truth, are relevant evidence.

Certainly, the trial court has the authority, if not a duty, to exclude evidence which may be relevant if it could be considered a waste of time or cumulative. Specifically, Rule 403 of the Arizona Rules of Evidence enumerates those limited circumstances where relevant evidence may be excluded by the trial judge:

---

<sup>1</sup> Gonzalez v. City of Tucson, 124 Ariz. 450, 604 P.2d 1161 (1979); State v. Clemons, 110 Ariz. 555, 521 P.2d 987 (1974); Foulk v. Kotz, 138 Ariz. 159, 673 P.2d 799 (App. 1983).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

07/22/2002

CLERK OF THE COURT  
FORM D000C

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

FN 2002-090245

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

It does not appear from the proposed questions Appellant sought to ask of Appellee that Appellee would be unfairly prejudiced. No confusion of the issues would result. The questions would not require an undue delay or take unnecessary time. Nor were the questions cumulative. In short, it does not appear that the relevant evidence could be excluded pursuant to Rule 403, as quoted above.

The right of due process includes the right of full and fair examination of adverse witnesses in a trial or hearing. This right is guaranteed to Arizona citizens by the Fourteenth Amendment to the United States Constitution and by Article II, Section 4 of the Arizona Constitution. Upon a review of the hearing in this case, it is clear that the trial judge precluded Appellant's trial counsel from cross-examining Appellee, Debra Ashley, on several areas critical to Ms. Ashley's credibility, bias and motive for testifying. As a result, Appellant was denied an opportunity to present relevant evidence in his case. This result contradicts principles of fundamental fairness and due process.<sup>3</sup>

---

<sup>3</sup> This Court is not suggesting that the trial court may never impose limitations on cross-examination by counsel. Rule 403, as cited above, provides several situations that specifically authorize the preclusion of relevant evidence. Additionally, it is not a violation of the parties due process rights for a trial judge to set reasonable time limits on the examination, cross-examination of witnesses, and arguments. However, these reasonable limits must be set at the beginning of the trial and applied to both parties, not arbitrarily set during the examination of a witness, or during an argument.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

07/22/2002

CLERK OF THE COURT  
FORM D000C

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

FN 2002-090245

Where a party has been denied an essential component of due process, such a denial constitutes fundamental error.<sup>4</sup>

For the reasons that the Appellant was denied his right of a fair trial by the trial judge's preclusion of relevant cross-examination,

IT IS ORDERED reversing the order of the East Mesa Justice Court of January 7, 2002 continuing the Domestic Violence Order of Protection in full force and effect.

IT IS FURTHER ORDERED remanding this case back to the East Mesa Justice Court for a new hearing on the issue whether to continue the Domestic Violence Order of Protection previously issued in full force and effect.

July 22, 2002

/S/ HONORABLE MICHAEL D. JONES

---

JUDICIAL OFFICER OF THE SUPERIOR COURT

---

<sup>4</sup> See State v. Flowers, 159 Ariz. 469, 768 P.2d 201 (App. 1989).  
Docket Code 019